

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

FREDERICK BRENNAN,

Plaintiff,

v.

2:11cv146
Electronic Filing

Judge Cercone
Magistrate Judge Eddy

COMMONWEALTH OF
PENNSYLVANIA,
OFFICER CLOUSE, OFFICER
PANCHICK,
ARNOLD POLICE STATION,
LAWRENCE KOENIG, ESQ.,

Defendants.

MEMORANDUM ORDER

The above captioned case was initiated by the filing of a motion to proceed *in forma pauperis* (Doc. No. 1) on February 4, 2011, and was referred to a United States Magistrate Judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the local rules of court.

On November 15, 2011, the Magistrate Judge filed a Report and Recommendation (Doc. No. 38) recommending that the Motion to Dismiss filed by the Commonwealth of Pennsylvania, one of several defendants in his civil rights complaint and amended complaint, be granted pursuant to the Eleventh Amendment to the United States Constitution, and because the Commonwealth is not a “person” and cannot be sued under 42 U.S.C. § 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71(1989). Plaintiff was served with the Report and Recommendation at his listed address and was advised that he had until December 2, 2011, to file written objections to the Report and Recommendation.

On November 30, 2011, plaintiff filed a submission that was accompanied by several exhibits and docketed by the Clerk as an "appeal of magistrate judge decision." Both the timing and the content of the submission suggests it was intended to be plaintiff's "objections" to the report and recommendation notwithstanding the first sentence and plaintiff's prior filing of that first page. In the submission plaintiff argues that his due process rights were violated due to his failure to receive bond on state charges and the delay between his initial pretrial detention and the resolution of those charges. Of course, these materials and the implicit arguments raised therein do not provide a legal basis that is sufficient to overcome the Commonwealth's invocation of the Eleventh Amendment. Accordingly, plaintiff's objections are without merit and after *de novo* review of the pleadings and documents in this case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 9th day of January, 2012,

IT IS ORDERED that plaintiff's objections are overruled;

IT FURTHER IS ORDERED that [15] the Motion to Dismiss filed by Commonwealth of Pennsylvania be, and the same hereby is, **GRANTED**;

IT IS FURTHER ORDERED that the Claims against the Commonwealth of Pennsylvania are **DISMISSED** with prejudice; and

IT IS FURTHER ORDERED that [38] the Report and Recommendation of November 15, 2011, as augmented above, is **ADOPTED** as the Opinion of the Court.

/s David Stewart Cercone
David Stewart Cercone
United States District Judge

cc: Frederick Brennan
2100 Park Hill Drive, Apt. G
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(Via First Class Mail)

Mary Lynch Friedline, Esquire
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